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IN THE

# Supreme Court of the United States

October Term, 1958

No. 161

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JAMES P. MITCHELL, Secretary of Labor,  
United States Department of Labor,

*Petitioner.*

—v.—

KENTUCKY FINANCE COMPANY, INC.  
and KENTUCKY DISCOUNT, INC.

*Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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## MEMORANDUM FOR THE RESPONDENTS

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HAROLD H. LEVIN

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We believe that the decision below is clearly correct. It should be said, too, that the petition does not represent at all adequately either the arguments of respondents or the solid grounds sustaining the decision below. The opinion of the court below reflects a much less partisan view of the respondents' position.

For example, it has not been our position that the legislative history of Section 13(a)(2) has been, or should be, ignored (cf. Pet. 9, 10-11, 13). It has been shown, rather, that:

(1) It is clear from the legislative history that Congress intended to supply a definition of "retail or service establishment" which was to replace the

Administrator's previous definition and was to be controlling;

(2) while other items in the legislative history may appear to favor petitioner's position, the whole of this material, at most, points inconclusively in both directions; and

(3) the plain and unambiguous language of the statute, which should prevail over legislative comment of at least doubtful relevance, compels the conclusion reached by the court below.

It seems premature, however, to burden the Court with the details of this and other arguments sustaining the decision of the Court of Appeals. For we acknowledge that this decision conflicts with that of the First Circuit in *Aetna Finance Co. v. Mitchell*, 247 F. 2d 190. And we concede that the question presented is not an unimportant one.

In these circumstances, it seems sufficient to note that the granting of the writ is not opposed.

Respectfully submitted,

HAROLD H. LEVIN,  
Attorney for Respondents.

July, 1958.